

TOWN OF SHANDAKEN ZONING BOARD
OF APPEALS

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In the Matter of the Appeal of Jeanne M. Maloney,

**FINDINGS AND
DECISION**

Appellant

From a Zoning determination, dated September 25, 2025,
of the Zode Enforcement Officer Grace Grant

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STATEMENT OF THE APPEAL

This appeal was filed October 5, 2025, by Jeanne M. Maloney (The Maloney Appeal), appealing the September 25, 2025, Determination of Town of Shandaken Zoning Enforcement Officer Grace Grant. This Determination stated that the event use (outdoor weddings events held under tents) constituted an accessory use to a hotel/motel and or lodge development and therefore is allowed in the Town of Shandaken following site plan approval by the Board.

The Maloney appeal seeks a reversal of determination alleging that:

“In a hotel/motel use, §116-10 in R-1.5, a motel is permitted with a Special Permit only”. Without a special permit, motel is preexisting nonconforming with the limitations enumerated in §116-58-1. Additionally, any proposed usage should have a special permit not merely site plan review, in order to protect the neighbors and the community.”

REVELAVANT FACTS

Appellant Jeanne M. Maloney owns and resides in property located at 5195 Route 208 (SBL 25.3-1-10), in the Town of Shandaken, this property is immediately adjacent to property owned by Perpetual Space, LLC 5191 Route 208, (SBL 25.3-1-11) (The Perpetual Space Property). The Perpetual Space property contains an existing motel known as the Leeway, which is a nine-unit facility that has existed on the Perpetual Space Property prior to current

zoning. Presently a motel/hotel/lodge use is a special permit use in the R1.5 zoning district in which the Perpetual Space property is located.

Perpetual Space applied to the planning board seeking site plan approval to hold weddings and special events on the Perpetual Space Property under an outdoor tent to include up to seventy-five guest for thirteen weekends per year. During the deliberation on the site plan, questions were raised by the public and the planning board whether such wedding special use was permitted on the property.

After back and forth between the Planning Board and the Zoning Board of Appeals the Zoning Enforcement Officer (ZEO) was requested to issue a written determination regarding the use, which resulted in, her September 25, 2025, determination, stating that in her opinion the event use (Weddings) was accessory to a hotel/motel and or lodge development and thereby allowed in the Town following site plan approval by the planning board.

On October 5, 2025, Jeanne Maloney filed an appeal. Since the filing of a third-party appeal does not stay proceedings on the action, Perpetual Space LLC/Leeway proceeded, at its own risk, to the planning board and obtained site plan approval to conduct the weddings pursuant to the determination of ZEO Grant.

At its, October 15, 2025, meeting the ZBA heard testimony, from ZEO Grant during which she explained the rationale for her decision focusing on the fact that building permits, tent permits and operating permits which authorized special events were issued by prior ZEO's.

At the October 15, 2025, meeting the ZBA also heard testimony from Charles J. Gotlieb, Esq., attorney for Perpetual Space, LLC/Leeway in support of ZEO Grant's determination.

On November 19, 2025, the board held a public hearing, at which attorney Gottlieb presented his argument in support of his client's position and support of ZEO Grants

determination. At that meeting several members of the public residing in the vicinity provided their testimony discussing the aspect of the use and alleging that due to the size and scope of the use, it is not a use customarily incidental to or accessory to the operation of the motel.

The ZBA also reviewed and received the following written submissions:

1. Letter dated October 15, 2025, with exhibits prepared by Charles J. Gottlieb on behalf of Perpetual Space/Leeway;
2. Letter dated November 18, 2025, with exhibits prepared by Eamon F. Millar, Esq., on behalf of Jeanne Maloney;
3. Letter dated November 19, 2025, with exhibits prepared by Charles J. Gottlieb, Esq.,
4. Written summaries of public testimony provided at the November 19, 2025, public hearing;
5. Certificate of Occupancy issued June 14, 2018, to Henry Stout for a 4,425 sq. ft pavilion for stated use as "Banquet" for property located at 1 Valley View Road;
6. Operating permits issued to Peak Event Services during Summer/Fall 2025 for 72 Andrew Lane;
7. Tent Permit issued April 23, 2024, for "Temporary Wedding Tent" for May 10-12, 2025, for 72 Andrew Lane.

QUESTION PRESENTED TO THE BOARD

1. Does the Holding of Wedding events holding up to seventy-five (75) under a tent on the Perpetual Space, LLC/Leeway, constitute an accessory use to the nine-unit motel located on the property.

2. If determined that the wedding use is an accessory to the motel does such use constitute an illegal expansion of the preexisting nonconforming use, since the motel/lodge existed prior to adoption of the zoning code and is therefore nonconforming as to the requirement to obtain a special use permit:

3. If the conduct of weddings is accessory and does not constitute an illegal expansion does the perpetual space require a special permit to expand the existing nonconforming use to include weddings in addition to the site plan approval granted by the planning board on October ___, 2025 subsequent to the subject appeal being filed with the ZBA.

DETERMINATION OF THE ZBA

Based upon the review written and oral testimony provided as well as, the ZBA members knowledge of the Town of Shandaken and surrounding area the ZBA determines the conducting of outdoor weddings/ events under a tent on thirteen weekends (from Friday to Sunday) with up to seventy-five people in attendance does not constitute an accessory use to the existing nine unit motel located on the property. The board also determines that since the use is not permitted as accessory to the motel there is no need to determine whether this use will constitute an illegal expansion of non-conforming use and or require a special permit.

REASON SUPPORTING THE DETERMINATION

The Town of Shandaken zoning code defines accessory use as follows:

“A use, occupancy or tenancy which is customarily incidental and subordinate to the principle use, occupancy or tenancy and located on the same lot or premises.”

The relevant portion of the Special Permit conditions for “Hotel or Motel or Lodge Development (Zoning Code Section 116-40(0) condition 4 and 5 state;

(4)

All uses integral to the hotel or motel development shall either be clearly accessory to the hotel, motel or lodge development, as defined within §116-4, or be permitted uses or special permit uses within the zoning district in which the hotel or motel development is proposed.

(5)

Integral accessory uses shall generally be limited to the following: meeting rooms; [restaurants and dining facilities;] recreational facilities, such as swimming pools and tennis courts; and small personal service/retail shops fully within the hotel, motel or lodge facility and selling newspapers, magazines, tobacco, small gifts and similar items.

The motel facility currently consists of nine units. The applicant now proposes to use the same property for wedding events for up to seventy-five attendees that will occur on thirteen weekends (Friday-Sunday) during the fall months. These events in addition to the seventy-five additional people to the site will include caterers, attendants’, etc., which is likely three to four times the maximum number of people that will be housed in the motel facilities.

Other than providing that the weddings/events will “be facilitated” by the Leeway and conducted “in conjunction” with the Leeway, there is no testimony that the majority of people attending the events will be required to stay at the motel or that the food served will be

prepared in Leeway facilities or there will be any connection whatsoever between the events and the motel/lodge activities. There is no indication that any of the attendees of the weddings/events would have access to the motel facility during the event. It appears that all attendees will be accommodated on a separate portion of the Leeway property. The activities, i.e. Outdoor music, parking etc. have no real connection to the motel's use. Therefore, based upon these facts and the testimony produced at the hearing, it is clear to this board that the wedding use is not subordinate but separate and distinct to the use of the principle building as a motel.

Finally, the Town Board provided specific guidance as to what constitutes an accessory use to a hotel/motel/lodge in the adoption of the Special Permit conditions for Hotel/Motel/Lodges. The wedding/event use is not a permitted or special permit use within R-1.5 Zoning district nor, for the reasons set forth above, is such use "clearly accessory" to the motel so it would fail §116-40(0) Special Permit condition #4 nor is it one of integral accessory uses as listed by the Town board in §116-40(0) condition #5. Therefore, there is no indication that the Town Board intended that the conduct of Outdoor weddings/events be considered an accessory use to a motel.

In addition, although there is some testimony, and the board acknowledges that there are other facilities within the Town that receive permits from the Building Department to erect tent to host wedding events, there is no documentation Rational of Support provided that outdoor weddings/events use constitutes an accessory use to a Hotel/motel/lodge facility, more importantly no Zoning Board of Appeals ever made a determination as to whether such use

constituted an accessory use to a hotel/motel/lodge, especially when it involves a motel use the type and size of the Leeway and outdoor wedding/event the size as proposed herein.

The board notes that whether the use of those facilities are pre-existing or even legal is not a matter before this board at this time. This question constitutes the first time, the question has been raised to a zoning board of appeals and therefore, the board makes this finding and determination based upon its review and facts as it related to this appeal as it pertains to this particular property.

On a motion of member _____, seconded by member _____ on a vote of 5 to 0 the board adopts this written finding and decision reflecting the vote taken by the board at its November 19, 2025, meeting.

